

MAR 07 2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**PATENT**

In re application of: Sharan et al.

Attorney Docket No.: CISC215/3614

Application No.: 09/935,238

Examiner: CHANG, RICHARD

Filed: August 21, 2001

Group: 2616

Title: APPARATUS AND METHOD FOR  
SNIFFING DATA IN A CABLE HEAD END

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office, Attention: Examiner CHANG, RICHARD at facsimile number 571-273-8300 on March 7, 2007.

Signed: \_\_\_\_\_

  
Natalie Morgan

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated on the attached sheets.

Remarks begin on page 2 of this paper.

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REMARKSExaminer Failed to Show that the Woundy and Fijolek Patents Teach or Suggest All the Claim Limitations

All claims 1-54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of U.S. Patent No. 6,031,841 (Woundy) and U.S. Patent No. 6,510,162 (Fijolek). Pertinent arguments were presented in Applicants' responses including, most recently, a response filed on December 6, 2006, see pages 2-3.

The invention of claims 1, 21, 42, and 54 is directed to mechanism for sniffing data. Specifically, independent claim 1 requires "*copying the received message including at least payload and sending the copied message including at least payload to a memory device.*" Other independent claims 21, 42, and 54 contain recitations similar to those of independent claim 1.

As described at, for example, page 22, lines 21 - page 23, line 14 of the specification, according to a specific exemplary embodiment of the invention, the packet buffer 725a includes a memory which is configured to store packets as the forwarding engine 721a performs its packet forwarding functions. When the received message meets a filtering criteria, the received message including at least payload is copied, and the copied message including at least payload is sent to a memory device (e.g., for sniffing purposes).

The primary reference, the Woundy patent, was cited as describing "copying the received message including at least *payload* and sending the copied message including at least payload to a memory device." Applicants respectfully submit that the Woundy patent does not show the claimed received message which includes at least payload.

In response to the remarks filed on February 3, 2006, the Action (March 20, 2006) seems to assert that the Woundy patent shows a service ID ("SID," column 3, line 25), and that the SID corresponds to the claimed payload. Applicants respectfully disagree.

In the present application, the cable modem's SID is specified in field 460 (page 16, lines 19-20 of the present specification). As shown in FIG. 4B, the field 460 for the SID is located in the MAC header 450. However, this MAC header 450 is not the claimed *payload* because the header 450 is outside of the payload 456, as illustrated in FIG. 4B of the application. Therefore, an SID cannot be said to correspond to the claimed payload. As such, the Woundy patent fails to teach or suggest the claimed invention. The Fijolek patent has been reviewed and found not to cure the above deficiency of the Woundy patent.

In the final Office Action (October 10, 2006), the Examiner cites Fig. 1, and column 3, lines 22-34 of the Woundy patent as allegedly describing receiving and storing the new SID and

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filter spec. Then, the Office Action at page 2, lines 16-20 asserts that "the SID and filter spec ... are actually the key data or payload ... ." However, the Action does not provide any basis for this conclusory assertion. Nor does the cited portion (i.e., Woundy, column 3, lines 22-34) provide basis for such a conclusion.

The above-identified cited portion of the Woundy patent merely describes that the cable modem receives the Dynamic Session Addition MAC message, stores the new SID and filter spec, and sends a Dynamic Session Acknowledgment MAC message. Nothing in the Woundy patent teaches or suggests that the SID and filter spec are in fact payload.

In the Response to Arguments section of the final Office Action, the Examiner merely asserts that "the SID and filter spec are actually the key data or payload ..." without spelling out the technical details by specifically pointing out the basis or reasoning for the asserted legal conclusion.

In view of the foregoing, it is respectfully submitted that the rejections of all pending claims should be withdrawn.

Respectfully submitted,  
BEYER WEAVER & THOMAS, LLP



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